

REMARKS

Claims 31 to 33 are added, and therefore claims 14 to 33 are now pending.

Reconsideration is respectfully requested based on the following.

Claim 16 was rejected under the second paragraph of 35 U.S.C. §112 as indefinite.

It is respectfully submitted that claim 16 was rewritten in the amendment previously filed on April 28, 2008 (and mailed April 24, 2008) in response to the non-final Office Action of March 3, 2008. Claim 16, as presented, does not recite the term “faster algorithm” as asserted in the Final Office Action, but provides for “an algorithm that is faster for predicting the instant than for triggering the reaction,” which is clear to a person skilled in the art. Therefore, withdrawal of the objection is respectfully requested.

Claims 14, 19, 20, 22 and 24 to 26 were rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,919,917 to Janssen et al. (“Janssen”).

To reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Final Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Final Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claims 14 and 22, as presented, are directed to a method and a system for controlling a driver-assistance device, providing features of “*evaluating measured quantities*,

to be recorded by sensors, for triggering a reaction”, *determining measuring instants* through repeating cycles for acquiring and evaluating the measured quantities,” and “*controlling the measuring instants so that one of the measuring instants follows as immediately as possible an instant at which there are measured quantities that give rise to a triggering*”.

The Final Office Action asserts that the text at column 2, lines 29 to 34, of Janssen discloses the features of “*measured quantities*,” “*determining measuring instants* through repeating cycles for acquiring and evaluating the measured quantities; and *controlling the measuring instants so that one of the measuring instants follows as immediately as possible an instant at which there are measured quantities that give rise to a triggering*.” (See Final Office Action, pages 3 and 8).

The “measuring instants”, as provided for in the context of claims 14 and 22, are measuring instants of time that are first determined through repeating cycles, and then controlled so that one of the measuring instants follows as immediately as possible an instant at which there are measured quantities that give rise to a triggering. In stark contrast, the cited portion of Janssen merely states the following:

Additional sensors 9c, 9d, and 9e can be used during parking maneuvers for measuring at all times the distance to the vehicle parked ahead or for detecting other (endangered) objects. If the distance to the forward vehicle or another object is too small, a message can be transmitted.

(Janssen, col. 2, lines 29 to 34).

The cited section of Janssen simply does not identically disclose (or even suggest) the features of “*determining measuring instants* through repeating cycles” or “*controlling the measuring instants* in such a way that one of the measuring instants follows as immediately as possible an instant at which there are measured quantities that give rise to a triggering” as provided for in the context of claims 14 and 22. Even if the cited section of Janssen may refer to “measuring at all times the distance”, since the Janssen system supposedly measures at all times, it simply cannot identically disclose (or even suggest) the features of “*determining measuring instants*” or “*controlling the measuring instants*”. This is because there is simply no need to “*determine measuring instants*” and/or because it is impossible to “*control the measuring instants*”, as provided for in the context of the claimed subject matter.

Accordingly, claims 14 and 22 are allowable, as are their respective dependent claims 19, 20 and 22 to 26. Withdrawal of the anticipation rejections of claims 14, 19, 20, 22 and 24 to 26 is therefore respectfully requested.

Claims 15, 23, 27, and 28 were rejected under 35 U.S.C. §103(a) as unpatentable over Janssen in view of U.S. Patent Publication No. 2003/0055563 to Lars et al. (“Lars”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 15, 23, 27, and 28 depend from claims 14 and 22 respectively, and are therefore allowable for the same reasons as claims 14 and 22, since the secondary Lars does not cure (and is not asserted to cure) the critical deficiencies of the primary Janssen reference.

Claims 16 to 18 and 30 were rejected under 35 U.S.C. §103(a) as unpatentable over Janssen alone. Claims 16 to 18 and 30 depend from claim 14, and are therefore allowable for essentially the same reasons as claim 14.

Claim 21 was rejected under 35 U.S.C. §103(a) as unpatentable over Janssen in view of U.S. Patent Publication No. 2001/0003168 to Breed et al. (“Breed”).

Claim 21 depends from claim 14, and therefore, are allowable for the same reasons as claim 14, since the secondary Breed does not cure (and is not asserted to cure) the critical deficiencies of the primary Janssen reference.

New claims 31 to 33 do not add any new matter and are supported by the present application, including the specification. Claims 31 to 33 depend from claim 14 and are therefore allowable for the same reasons as their base claim.

Also, claim 31 provides the following further features: the sensor signals are preprocessed to be available in an evaluable form as measurement data for later evaluation; the measurement data are transferred to a plurality of program for evaluating the measurement data, each of the programs requiring a processing duration, and the processing durations add up to one cycle time; following the evaluation, if a triggering criterion is reached, a specific reaction is triggered, and the measuring cycle is repeated, and if the triggering criterion is not reached, a prediction of triggering instants is subsequently performed; and if one of the measuring instants to be expected using a previously set cycle time is favorably situated for the predicted triggering instant, the previously set cycle time remains unchanged and the program is repeated, and if the measuring instant is not favorable, the cycle time is adjusted to provide an altered cycle time, and the program is repeated with the altered cycle time. It is respectfully submitted that the applied references do not disclose these further features, and are therefore allowable for these further reasons, as are its dependent claims 32 and 33.

Accordingly, claims 15 to 18, 21, 23, and 27 to 33 are allowable.

U.S. Patent Application No. 10/552,402
Attorney Docket No. 10191/4460
RCE Reply to Final Office Action of August 25, 2008
(in lieu of Appeal Brief due on February 17, 2009)

CONCLUSION

In view of the foregoing, claims 14 to 33 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,
KENYON & KENYON

Dated: 2/17/2009

By: 

Gerard A. Messina
(Reg. No. 35,952)

One Broadway
New York, NY 10004
(212) 425-7200

CUSTOMER NO. 26646

1685437